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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,986	09/30/2003	Jon Arthur Fairhurst	7146.0162	7700
55648	7590	12/05/2007	EXAMINER	
KEVIN L. RUSSELL			RYAN, PATRICK A	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP			ART UNIT	PAPER NUMBER
1600 ODSTOWER			4126	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/676,986	FAIRHURST, JON ARTHUR	
	<b>Examiner</b>	<b>Art Unit</b>	
	Patrick A. Ryan	4126	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 September 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/23/04</u> .   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. This is the First Action based on the 10/676986 application filed September 30, 2003. As originally filed, Claims 1-18 are presented for examination.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to for the following reasons:
  - a. The abstract recites information given in the title.
  - b. The abstract is 5 words in length; a minimum of 50 words is requested that sufficiently summarize the subject matter of the Detailed Description.
4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: support for "information functionality," as it applies in Claim 3, is not supported in the original description. Further disclosure as to the meaning and function of "information functionality" in the Detailed Description is requested.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-4, 6, 8, 10, and 12-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Applicant fails to specifically describe the nature of "informational material", which is stated throughout the specification and claims section, and appears to be a critical aspect of what the Applicant regards as his invention. For the purpose of this Office Action, the Examiner interprets "informational material" to include broadcast television programs consisting of the display of text, audio, and/or graphic content that are viewed through a television channel. Further clarification as to the meaning and intended use of "informational material" is requested.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1(b) is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1(b) recites the limitation "said different

channels." There is insufficient antecedent basis for this limitation in the preamble of Claim 1 or section (a) of Claim 1.

9. Claim 17 recites the limitation "said favorite functionality" as dependent from Claim 3. Claim 3 does not recite the limitation of "favorite functionality." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-4, 12, 16, and 17 are rejected under 35 U.S.C 102(e) as being anticipated by Thompson (US Patent Application Publication 2003/0018973 A1), hereinafter Thompson.

12. In regards to Claim 1, Thompson teaches a method for modifying a set of informational material for presentation on a video presentation device for a user (flow chart steps of Figure 2, with specific reference to block 206, as described in Paragraph [0026]). The method comprising: the user selecting a plurality of different informational materials ("accommodate any number of channels that a user wishes to select", cited from Paragraph [0017], lines 6-8); and modifying the set of informational material for the

user based upon the duration that the different channels are selected over a temporal time period (time periods 302A-302J of Figure 3, as described in Paragraph [0029]).

13. In regards to Claim 2, Thompson teaches the method further comprising selecting each one of the plurality of informational materials with a remote control (remote control 112 of Figure 1, as described in Paragraph [0022] lines 7-10, with further reference to Paragraph [0020] lines 6-13).

14. In regards to Claim 3, Thompson teaches the method wherein informational materials are displayed as a result of selecting an information functionality with a remote control (functions provided by the remote control 112, as described in Paragraph [0023]).

15. In regards to Claim 4, Thomson teaches the method wherein selecting the informational materials functionality is by pressing a button (channel button 132A and 132B as described in Paragraph [0020]).

16. In regards to Claim 12, Thompson teaches the method wherein the set of informational materials is less than all available informational materials (segregated channel “(A) list” and “(B) list”, as described in Paragraph [0037]).

17. In regards to Claim 16, Thompson teaches the method wherein the set of informational materials is determined in a manner free from explicit user definition (functions performed by processor, which are described in Paragraph [0006] lines 12-17).

18. In regards to Claim 17, Thompson teaches the method wherein the informational materials are displayed as a result of selecting the favorite functionality with the remote

control (functions provided by the remote control 112, as described in Paragraph [0023]), where the set of informational materials is determined in a manner free from explicit user definition (functions preformed by processor, which are described in Paragraph [0006] lines 12-17).

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

20. Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US Patent Application Publication 2003/0018973 A1) in view of Lin (United States Patent 6,934,917 B2).

21. In regards to Claim 5, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period, but does not teach that the temporal time period is a plurality of days.

In a similar field of invention, Lin teaches a system and method for generating a list of favorite channels automatically. In Lin's method, the time period in which the user's activity can be one or more particular day(s), week(s), or month(s) (as described in Col. 1, Lines 57-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Lin's method of monitoring the user for a plurality of days in the method of Thompson because a larger sum of data on a user of the system would establish a more accurate preference channel list and, therefore, more accurately represent the true likes/dislikes of the user.

22. Claims 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US Patent Application Publication 2003/0018973 A1) in view of Lin (United States Patent 6,934,917 B2), in further view of Candelore (US Patent Application Publication 2002/0104081 A1).

23. In regards to Claims 13 and 15, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period, but does not teach that the modification can be based on the time of day or day of the month that the different informational materials are selected.

In a similar field of invention, Lin teaches a method wherein the modification of a favorite channel list is based upon relative statistics, such as the time of day ("Start Time" and "End Time" of Table I, as shown and described in Col. 4 Lines 10-29) or the day of the month ("date" column of Table I, as shown and described in Col. 4 Lines 14-38) the different channels are selected.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson with the system of Lin in order have the

ability to modify sets of informational materials for the user based upon the time of day or day of month because, as disclosed by Candelore:

“... if one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at a maximum count of “255.” Thus, the statistical data may become inaccurate after a certain count” (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time intervals), as performed by Candelore, would therefore eliminate the out dated entries of a favorites list, which would more accurately represent the current likes/dislikes of the user.

24. In regards to Claims 14, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period, but does not teach that the modification can be based on the day of the week that the different informational materials are selected.

In a similar field of invention, Candelore teaches a method wherein a favorites list is created based on a number of statistical factors, one of which is the day of the week a particular channel is tuned (as described in Paragraph [0055] lines 12-19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Thompson with the system of Candelore in order have the ability to modify sets of informational materials for the user based upon the day of the week because, as disclosed by Candelore:

“... if one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at a maximum count of “255.” Thus, the statistical data may become inaccurate after a certain count” (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time intervals), as performed by Candelore, would therefore eliminate the out dated entries of a favorites list, which would more accurately represent the current likes/dislikes of the user.

25. Claims 6, 8, 10, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US Patent Application Publication 2003/0018973 A1) in view of Finseth et al. (United States Patent 6,813,775 B1).

26. In regards to Claim 6, Thompson teaches a method of modifying the set of informational materials for the user based the duration that the different channels are selected over a temporal time period, but does not teach that the selected different informational materials are free from modifying the set of informational materials if the duration is less than a threshold.

In a similar field of invention, Finseth et al. teaches a method of developing a user's selection history by keeping track of the amount of time each television program is watched. Finseth discloses a technique to filter out history data if the users viewing time is less than a given threshold in order to detect channel surfing (as described in Col. 10 lines 53-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson with the method of Fineth in order to filter out informational materials if the users viewing time is less than a given threshold because, this filtering process would eliminate the erroneous data generated as a user skips through the channel content that is undesirable. Fineth's less than threshold

would account for the content the user skips over during a period of channel surfing and would therefore more accurately develop a preference list of content for the user.

27. In regards to Claim 8 and 10, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period, but does not teach that the selected different informational materials are free from modifying the set of informational materials if the duration is greater than a threshold.

In a similar field of invention, Finseth teaches a method of developing a user's selection history by keeping track of the amount of time each television program is watched. Finseth discloses a technique to filter out history data if the users viewing time is greater than a given threshold in order to detect, for example, when the user has forgotten to turn off the receiver (as described in Col. 10 lines 53-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Thompson with the method of Fineth in order to filter out informational materials if the users viewing time is greater than a given threshold because, this filtering process would eliminate the erroneous data generated when a user leaves the receiver on for an extended period of time without watching the content. Fineth's greater than threshold would therefore account for the content the user is not actually watching during this period of inactivity and would therefore more accurately develop a preference list of content for the user.

28. In regards to Claim 18, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels

are selected over a temporal time period, but does not teach a method of identifying the user.

In a similar field of invention, Finseth teaches a method of prompting the user to identify himself or herself (screen 110 of Figure 5, as described in Col. 11 Lines 1-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Thompson with the method of Finseth so that the actions of only one user is tracked and recorded at a given time, which would therefore more accurately represent the preferences of the individual as opposed to a community (e.g. a family) of users that have access to one particular receiver.

29. Claims 7, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US Patent Application Publication 2003/0018973 A1) in view of Finseth et al. (United States Patent 6,813,775 B1) in further view of Eldering et al (United States Patent 7,240,355 B1).

In regards to Claim 7, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period and Finseth teaches a method of modifying based on a temporal time period of less than a threshold, but each do not teach the threshold of 3 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a channel surfing detection method, which involves disregarding a channel that is selected for only 3-4 seconds (as described in Col. 2 lines 19-45).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Thompson and Finseth with the method of Eldering in order to accurately account for a user rapidly skipping undesirable content, by disregarding data characterized by channel surfing, because a more accurate representation of the user's likes/dislikes in program content can be created.

30. In regards to Claims 9 and 11, Thompson teaches a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period and Finseth teaches a method of modifying based on a temporal time period of greater than a threshold, but each do not teach the threshold of 45 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a method of detecting when a user is idle, which involves disregarding a channel when a lack of channel changes, volume changes, or any other selection changes activity for more than 3 hours ("dead periods" as described in Col. 2 lines 46-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Thompson and Finseth with the method of Eldering in order to filter out informational materials if the user's viewing time is greater than a given threshold of 3 hours because, this filtering process would eliminate the erroneous data generated when a user leaves the receiver on for an extended period of time without watching the content. A threshold of 3 hours, which is greater than 45 seconds,

would therefore account for the content the user is not actually watching during this period of inactivity and would therefore more accurately develop a preference list of content for the user.

### ***Conclusion***

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).
32. US Patent Number (5,758,259 A) Lawler, teaches a method of preferred program suggestion based on general template profiles, other user profiles, and viewer program history. In addition, Lawler's method requires a user to enter a PIN for identification reasons.
33. US Patent Number (5,819,156 A) Belmont, teaches a TV/PC convergence device that tracks, records, and reports the amount of time a user spends per channel. In addition, Belmont uses a 3-10 second window in order to detect channel surfing by the user.
34. US Patent Application Publication (2002/0129368 A1) Schlack et al., teaches a television viewing environment that automatically generates one or more profiles for each viewer based on the viewing habits and preferences of the viewer.

35. US Patent Application Publication (2004/0040040 A1) Danker et al., teaches a media recommendation system based on the user's perceived viewing patterns. Media recommendations are made based on negative feedback from the user, which is determined by how long the user is tuned to a particular program, such as broadcast channel, broadcast day, or program description.

36. US Patent (6,714,917 B1) Eldering et al., teaches a subscriber identification system in which EPG data, such as scrolling speed, paging speed, and information screen viewing time are used to create a signature of a user for identification.

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick A. Ryan whose telephone number is (571) 270-5086. The examiner can normally be reached on Mon to Thur, 8:00am - 5:00pm EST.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Chow can be reached on (571) 272-7767. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick A Ryan/  
Examiner, Art Unit 4126  
Wednesday, December 05, 2007

/Dennis-Doon Chow/  
Supervisory Patent Examiner, Art Unit 4126